Tokio Marine Life Insurance Malaysia Bhd v RHB Bank Bhd

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO WA-24NCC-433–09 OF 2024
ATAN MUSTAFFA J
3 MARCH 2025

Contract — Contractual terms — Right of first refusal — Scope of right of first refusal in commercial contracts — Proper interpretation and implementation of right of first refusal in Bancassurance agreement between insurance company and bank — Valid exercise of right of first refusal — Insurance company's entitlement to receive full disclosure of final binding terms which bank was minded to accept from its successful bidder and meaningful opportunity to match those terms — Whether right of first refusal remained in force following bank's conduct of a bid process for its future Bancassurance arrangements, or whether such right had been discharged through bank's actions

The present originating summons concerned the proper interpretation and implementation of a right of first refusal ('ROFR') in a Bancassurance agreement between the plaintiff, Tokio Marine Life Insurance Malaysia Bhd ('TMLM'), and the defendant, RHB Bank Bhd ('RHB'). In the present case, the plaintiff sought for the following reliefs: (a) a declaration that its ROFR under cl 3.2(b) of the Bancassurance agreement remained in full force and subsisted; (b) an order compelling RHB to deliver either the full terms of the successful bid from its bancassurance bid process (including both conventional life and family takaful insurance) or the conventional life insurance terms only from that bid; and (c) an injunction restraining RHB from contracting with any third party pending the exercise of TMLM's ROFR. These reliefs were sought on several grounds: (i) that the ROFR must be given meaningful commercial effect as a protection for TMLM's position as incumbent partner; (ii) that RHB's letter of 25 April 2024 could not constitute a valid offer as it lacked necessary detail, was based on non-binding bids, and unexpectedly included family takaful products; (iii) that the agreed implementation framework (for implementing the ROFR) was meant to complement rather than replace the contractual right; (iv) that the August 2024 discussions (during which RHB had given information to TMLM regarding the gaps between TMLM's bid and the successful bidder's terms) were inadequate as they covered only selected parameters rather than full terms; and (v) that the balance of convenience favoured granting relief as damages would be inadequate for the loss of a long-term strategic relationship and RHB would suffer no detriment if TMLM matched the successful bid's terms. The main issue in the present case was whether the ROFR remained in force following RHB's conduct of a bid process for its future bancassurance arrangements, or

whether the ROFR had been discharged through RHB's actions. This matter raised important questions about the scope of the ROFR in commercial contracts and the adequacy of steps taken to discharge such rights.

Held:

(1) The court found that the principles established in the English High Court case of *Astrazenica UK Ltd v Albemarle International Corp* [2011] EWHC 1574 (Comm) were particularly apposite. In the said case, the court emphasised that where there is a third-party deal which the grantor is minded to proceed with, 'full and fair disclosure of that deal by the grantor is required' to enable meaningful exercise of the right of first refusal. Moreover, 'good faith in setting out the precise terms of the offer the grantee has to match' is essential (see paras 27 & 29).

(2) The evidence showed that at the time of the 25 April 2024 letter, RHB had only received non-binding phase 1 bids and had not yet received or evaluated binding phase 2 bids, as such, RHB could not have been 'minded to accept' any particular terms at that stage. The court was of the view that the letter was premature, based on non-binding indicative bids, and lacked essential terms necessary for a valid offer under ROFR. In respect of the agreed framework, while such framework may establish procedures for implementation, it could not override the fundamental requirements for a valid offer under ROFR. For the above reasons, the court found that RHB's letter of 25 April 2024 did not constitute valid exercise of the ROFR, despite the agreed implementation framework. Consequently, TMLM's ROFR remained in force until properly discharged through disclosure of the final binding terms RHB is minded to accept (see paras 30–31 & 34).

(3) RHB's argument that TMLM's participation in phase 2 bids constituted a counter-offer which discharged the ROFR was not sustainable. The evidence showed that when participating in phase 2, TMLM clearly maintained its position that the ROFR would only be properly implemented after RHB had identified its preferred bidder at the conclusion of phase 2. Further, as evidenced by the correspondence between the parties, the bid process was conducted in two phases precisely because phase 1 involved non-binding indicative bids while phase 2 was for final binding bids. It would defeat the commercial purpose of the ROFR if TMLM was precluded from matching the final binding bid that RHB ultimately decided to accept. Such an interpretation would render the ROFR practically meaningless. For these reasons, the court found that TMLM's participation in phase 2 of the bid process did not discharge or waive its rights under the ROFR. TMLM remained entitled to be given the opportunity to match the successful bid selected by RHB at the conclusion of phase 2 (see paras 40 & 44–45).

(4) The contemporaneous documentary evidence demonstrated that the August 2024 discussions were expressly conducted without prejudice to TMLM's ROFR. Further, although RHB did provide quantitative comparisons on several key financial terms in its email of 8 August 2024, this disclosure was still selective rather than comprehensive. RHB provided selected parameters of comparison between TMLM's bid and the successful bid, rather than the full and complete terms of the successful bid. For these reasons, the court found that the August 2024 discussions, and the relatively detailed but nonetheless selective disclosure of certain terms by RHB did not constitute proper discharge of TMLM's ROFR. The right continued to subsist until TMLM was provided with the full and complete terms of the successful bid and given a meaningful opportunity to match those terms (see paras 48, 50 & 57).

(5) The contemporaneous documentary evidence established that the Bancassurance agreement between the parties related solely to conventional life insurance. In terms of the commercial context, there was no single insurer in Malaysia licensed to provide both conventional and takaful products under the same entity. Therefore, RHB's inclusion of family takaful products in its 25 April 2024 offer rendered that offer ineffective for the purposes of discharging TMLM's ROFR. TMLM's subsequent ability to participate in phase 2 with a takaful partner did not alter this conclusion, as the validity of the April offer ought to be assessed based on the circumstances existing at the time it was made (see paras 60 & 65–66).

(6) Based on the above findings, the court made the following orders: (a) a declaration that TMLM's ROFR remained in full force and subsisted; (b) several procedural orders as per para 91(b) of the judgment; and (c) costs of RM50,000 to be paid by RHB to TMLM, subject to payment of allocator fees (see para 91).

[Bahasa Malaysia summary

Saman pemula semasa adalah berkaitan dengan tafsiran yang betul dan pelaksanaan hak penolakan pertama ('PHPP') dalam perjanjian Bancassurance antara plaintif, Tokio Marine Life Insurance Malaysia Bhd ('TMLM'), dan defendan, RHB Bank Bhd ('RHB'). Dalam kes semasa, plaintif memohon relif-relif berikut: (a) pengisytiharan bahawa PHPPnya di bawah klausa 3.2(b) perjanjian Bancassurance tersebut kekal berkuat kuasa sepenuhnya dan wujud; (b) perintah yang memaksa RHB untuk menyerahkan sama ada terma penuh bidaan yang berjaya daripada proses bidaan bancassurance RHB (termasuk kedua-dua insurans hayat konvensional dan takaful keluarga) atau terma insurans hayat konvensional sahaja daripada bidaan tersebut; dan (c) injunksi yang menghalang RHB daripada membuat kontrak dengan mana-mana pihak ketiga sementara menunggu pelaksanaan PHPP TMLM. Relif-relif ini telah dipohon berdasarkan beberapa alasan: (i) bahawa PHPP tersebut haruslah

diberi kesan komersial yang bermakna sebagai perlindungan untuk kedudukan TMLM sebagai rakan kongsi semasa; (ii) bahawa surat RHB bertarikh 25 April 2024 tidak boleh menjadi tawaran yang sah kerana ia tidak mempunyai butiran yang diperlukan, berdasarkan bidaan yang tidak mengikat, dan secara tidak dijangka menyertakan produk takaful keluarga; (iii) bahawa rangka kerja pelaksanaan yang dipersetujui (untuk melaksanakan PHPP tersebut) bertujuan untuk melengkapkan dan bukannya menggantikan hak di bawah kontrak; (iv) bahawa perbincangan Ogos 2024 (di mana RHB telah memberikan maklumat kepada TMLM mengenai jurang antara bidaan TMLM dan terma-terma pembida yang berjaya) adalah tidak mencukupi kerana ia meliputi hanya parameter terpilih dan bukannya terma-terma penuh; dan (v) bahawa imbangan kemudahan menjurus kepada pemberian relif kerana ganti rugi adalah tidak mencukupi untuk kehilangan hubungan strategik jangka panjang dan RHB tidak akan mengalami kerugian jika TMLM memadankan terma tawaran yang berjaya. Isu utama dalam kes semasa ialah sama ada PHPP tersebut kekal berkuat kuasa apabila RHB menjalankan proses bidaan untuk pengaturan bancassurance masa depannya, atau sama ada PHPP tersebut telah ditunaikan melalui tindakan RHB. Perkara ini menimbulkan persoalan penting tentang skop PHPP dalam kontrak komersial dan kecukupan langkah yang diambil untuk menunaikan hak tersebut.

Diputuskan:

(1) Mahkamah mendapati bahawa prinsip yang ditetapkan dalam kes Mahkamah Tinggi Inggeris *Astrazenica UK Ltd v Albemarle International Corp* [2011] EWHC 1574 (Comm) adalah amat relevan. Dalam kes tersebut, mahkamah menekankan bahawa sekiranya pemberi hak berfikir untuk meneruskan dengan perjanjian pihak ketiga, 'pendedahan penuh dan saksama perjanjian tersebut oleh pemberi hak adalah diperlukan' untuk membolehkan hak penolakan pertama dilaksanakan dengan betul. Selain itu, 'kesucian hati dalam menetapkan terma-terma yang tepat bagi tawaran yang perlu dipadankan oleh penerima' adalah penting (lihat perenggan 27 & 29).

(2) Keterangan menunjukkan bahawa pada masa surat 25 April 2024 tersebut, RHB hanya menerima bidaan fasa 1 yang tidak mengikat dan belum lagi menerima atau menilai bidaan fasa 2 yang mengikat, oleh itu, RHB tidak mungkin 'berfikir untuk menerima' mana-mana terma tertentu pada peringkat tersebut. Mahkamah berpendapat bahawa surat tersebut adalah pramatang, berdasarkan bidaan indikatif yang tidak mengikat, dan tidak mempunyai terma-terma penting yang diperlukan untuk tawaran yang sah di bawah PHPP. Berkenaan dengan rangka kerja yang dipersetujui tersebut, walaupun rangka kerja tersebut mungkin menetapkan prosedur untuk pelaksanaan, ia tidak boleh mengatasi keperluan asas untuk tawaran yang sah di bawah PHPP. Atas sebab-sebab

di atas, mahkamah mendapati bahawa surat RHB bertarikh 25 April 2024 bukan merupakan pelaksanaan PHPP yang sah, walaupun dengan kewujudan rangka kerja pelaksanaan yang dipersetujui tersebut. Oleh itu, PHPP TMLM kekal berkuat kuasa sehingga ditunaikan dengan betul melalui pendedahan terma-terma terakhir yang mengikat yang RHB berfikir untuk menerima (lihat perenggan 30–31 & 34).

(3) Hujah RHB bahawa penyertaan TMLM dalam bidaan fasa 2 merupakan tawaran balas yang telah menunaikan PHPP tersebut adalah tidak mampan. Keterangan menunjukkan bahawa semasa mengambil bahagian dalam fasa 2 tersebut, TMLM dengan jelas mengekalkan pendiriannya bahawa PHPP tersebut hanya akan dilaksanakan dengan betul selepas RHB telah mengenal pasti pembida pilihannya pada akhir fasa 2. Selanjutnya, seperti yang dibuktikan oleh surat-menyurat antara pihak-pihak, proses bidaan dijalankan dalam dua fasa secara tepatnya kerana fasa 1 melibatkan bidaan indikatif yang tidak mengikat manakala fasa 2 pula untuk bidaan akhir yang mengikat. Tujuan komersial PHPP tersebut akan dinafikan jika TMLM dihalang daripada memadankan bidaan akhir yang mengikat yang RHB putuskan untuk menerima. Tafsiran sedemikian akan menjadikan PHPP tersebut hampir tidak bermakna. Atas sebab-sebab ini, mahkamah mendapati bahawa penyertaan TMLM dalam fasa 2 proses bidaan tersebut tidak melepaskan atau mengenepikan haknya di bawah PHPP tersebut. TMLM kekal berhak untuk diberi peluang untuk memadankan bidaan yang berjaya yang dipilih oleh RHB pada akhir fasa 2 (lihat perenggan 40 & 44–45).

(4) Keterangan dokumentar sezaman menunjukkan bahawa secara jelasnya perbincangan Ogos 2024 telah dijalankan tanpa menjejaskan PHPP TMLM. Selanjutnya, walaupun RHB memberikan perbandingan kuantitatif pada beberapa terma kewangan utama dalam emelnya pada 8 Ogos 2024, pendedahan ini masih bersifat selektif dan bukannya menyeluruh. RHB menyediakan parameter perbandingan terpilih antara bidaan TMLM dan bidaan yang berjaya, bukannya terma-terma penuh dan lengkap bidaan yang berjaya. Atas sebab-sebab ini, mahkamah mendapati bahawa perbincangan Ogos 2024 tersebut, dan pendedahan yang agak terperinci tetapi tetap selektif bagi terma-terma tertentu oleh RHB tidak membentuk penunaian PHPP TMLM yang sewajarnya. Hak tersebut terus wujud sehingga TMLM dibekalkan dengan terma-terma penuh dan lengkap bagi bidaan yang berjaya dan diberi peluang yang bermakna untuk memadankan terma-terma tersebut (lihat perenggan 48, 50 & 57).

(5) Keterangan dokumentar sezaman membuktikan bahawa perjanjian Bancassurance antara pihak-pihak adalah semata-mata berkaitan dengan insurans hayat konvensional. Dari segi konteks komersial, tiada satu pun syarikat insurans di Malaysia yang diberikan lesen untuk menyediakan

kedua-dua produk konvensional dan takaful di bawah entiti yang sama. Oleh itu, tindakan RHB yang memasukkan produk takaful keluarga dalam tawaran 25 April 2024 menyebabkan tawaran tersebut tidak mempunyai kesan bagi tujuan menunaikan PHPP TMLM. Keupayaan TMLM untuk kemudiannya mengambil bahagian dalam Fasa 2 bersama dengan rakan kongsi takaful tidak mengubah kesimpulan ini, kerana keabsahan tawaran April tersebut sepatutnya dinilai berdasarkan keadaan yang wujud pada masa ia dibuat (lihat perenggan 60 & 65–66).

(6) Berdasarkan dapatan-dapatan di atas, mahkamah membuat perintah-perintah berikut: (a) pengisytiharan bahawa PHPP TMLM kekal berkuat kuasa sepenuhnya dan wujud; (b) beberapa perintah prosedural seperti yang dinyatakan dalam perenggan 91(b) penghakiman; dan (c) kos RM50,000 yang perlu dibayar oleh RHB kepada TMLM, tertakluk kepada pembayaran fi alokator (lihat perenggan 91).]

Cases referred to

Astrazenica UK Ltd v Albemarle International Corp [2011] EWHC 1574 (Comm), QBD (folld)

Fraser and others v Thames Television Ltd and others [1975 F No 1961] [1984] QB 44, QBD (refd)

QRS Sciences Ltd v BTG International Ltd [2005] EWHC 1500 (Ch), Ch D (refd)

Smith v Morgan [1971] 2 All ER 1500; [1971] 1 WLR 803, Ch D (refd)

Legislation referred to

Specific Relief Act 1950 s 55

Robert Lazar (with Tan Shang Neng) (Tan Shang Neng) for the plaintiff.
Sean Yeow (with Andrea Mei Yng and Lim Qian Wen) (Lee Hishamuddin Allen & Gledhill) for the defendant.

Atan Mustaffa J:

[1] This originating summons concerns the proper interpretation and implementation of a right of first refusal in a Bancassurance agreement between the plaintiff, Tokio Marine Life Insurance Malaysia Bhd ('TMLM'), and the defendant, RHB Bank Bhd ('RHB'). The central issue is whether this right remains in force following RHB's conduct of a bid process for its future bancassurance arrangements, or whether the right has been discharged through RHB's actions. This matter raises important questions about the scope of first refusal rights in commercial contracts and the adequacy of steps taken to discharge such rights.

BACKGROUND FACTS

[2] On 29 December 2014, TMLM and RHB entered into a Bancassurance arrangement agreement ('Bancassurance agreement') which replaced and superseded their earlier agreement dated 1 July 2010. Under the Bancassurance agreement, RHB would distribute TMLM's conventional life insurance products through RHB's banking channels. The Bancassurance agreement is for a term of ten years commencing 1 January 2015 and expiring on 31 December 2024.

[3] Clause 3.2(b) of the Bancassurance agreement provides that RHB grants TMLM a first right of refusal to extend the term, six months before expiry, to provide both parties with sufficient time to negotiate on the renewal of the Bancassurance agreement. It reads:

> (b) RHB shall grant TM the first right of refusal to extend the Term, six (6) months before expiry of the Term, to provide both Parties with sufficient time to negotiate on the renewal of this Agreement.

[4] On 16 January 2024, RHB wrote to TMLM indicating that it would be embarking on a bid process for its bancassurance arrangement for purposes of price discovery. RHB proposed bringing forward the timeline for exercising the first right of refusal to coincide with this bid process.

[5] Through correspondence between January and February 2024, the parties negotiated a framework for implementing the first right of refusal. TMLM initially proposed in its letter dated 29 January 2024 that RHB would notify TMLM of the best offer received at the conclusion of the bid process. RHB responded on 7 February 2024 with an alternative three-step framework: TMLM would have access to bid information, RHB would make an offer after considering bids received, and TMLM would have six weeks to decide. TMLM accepted this framework by letter dated 20 February 2024.

[6] The bid process was conducted in two phases. Phase 1 involved non-binding indicative proposals, while phase 2 required final binding proposals from shortlisted bidders. RHB appointed Bank of America Securities as its independent external advisor for the process.

[7] On 25 April 2024, after receiving bids from ten insurance companies in phase 1, RHB made an offer to TMLM setting out terms for a 20-year renewal. The offer included both conventional life and family takaful products, with an upfront access fee of RM1,850m and various other financial considerations.

[8] TMLM declined RHB's offer on 20 June 2024. On the same day,

TMLM submitted a phase 2 bid jointly with Takaful Ikhlas Family Bhd. A total of five insurance companies, including TMLM, submitted bids in phase 2.

[9] In August 2024, following meetings between senior executives of both organisations, RHB provided TMLM with information about gaps between TMLM's bid and that of another bidder (referred to as 'bidder X'). On 8 August 2024, RHB sent an email detailing specific differences between the bids, including terms related to personal banker banca incentives, marketing allowances, and reciprocal business commitments.

[10] TMLM submitted a revised bid on 26 August 2024. This revised bid maintained the upfront access fee of RM1,850m but differed from bidder X's terms in several aspects, including offering personal banker banca incentives of RM5,000 compared to bidder X's RM5,500.

[11] By way of Bank of America Securities' letter dated 30 August 2024, RHB informed TMLM that it would not be proceeding with further discussions on TMLM's bid. Following this, a series of email exchanges occurred between the parties over the next few days. On 2 September 2024, TMLM's solicitors formally wrote to RHB's solicitors, reasserting their position that the right of first refusal still subsisted and requesting that a bona fide offer be presented to TMLM within three days, or alternatively, that the parties begin negotiating the renewal process as outlined in cl 3.2(b) of the Banassurance agreement.

[12] The dispute escalated when RHB's solicitors responded on 4 September 2024, firmly maintaining that the right of first refusal had already been exercised and declining TMLM's request for a bona fide offer. TMLM's solicitors replied on 9 September 2024 reaffirming their client's position that the right of first refusal remained in effect. That same day, TMLM filed this originating summons with the High Court.

[13] The current Bancassurance agreement between the parties continues until 31 December 2024. TMLM commenced these proceedings seeking declarations regarding its first right of refusal and orders compelling RHB to disclose the full terms of the successful bid.

ORIGINATING SUMMONS

[14] TMLM seeks three primary reliefs in this originating summons: first, a declaration that its right of first refusal under cl 3.2(b) of the Bancassurance agreement dated 29 December 2014 remains in full force and subsists; second, an order compelling RHB to deliver either the full terms of the successful bid from its bancassurance bid process (including both conventional life and

family takaful insurance) or the conventional life insurance terms only from that bid; and third, an injunction restraining RHB from contracting with any third party pending the exercise of TMLM's right of first refusal.

[15] These reliefs are sought on several grounds: that the right of first refusal must be given meaningful commercial effect as a protection for TMLM's position as incumbent partner; that RHB's letter of 25 April 2024 cannot constitute a valid offer as it lacked necessary detail, was based on non-binding bids, and unexpectedly included family takaful products; that the agreed implementation framework was meant to complement rather than replace the contractual right; that the August 2024 discussions were inadequate as they covered only selected parameters rather than full terms; and that the balance of convenience favors granting relief as damages would be inadequate for the loss of a long-term strategic relationship and RHB would suffer no detriment if TMLM matches the successful bid's terms.

POSITIONS TAKEN BY PARTIES

[16] TMLM contends that its right of first refusal under cl 3.2(b) of the Bancassurance agreement remains in full force and must be given meaningful commercial effect. TMLM's position is that RHB's letter of 25 April 2024 cannot constitute a valid discharge of this right as it lacked necessary detail, was based on non-binding phase 1 bids, and unexpectedly included family takaful products. TMLM maintains that the agreed framework for implementing the right was meant to complement, not replace, the underlying contractual right, and that its participation in phase 2 of the bid process was expressly without prejudice to its rights. TMLM argues that at the conclusion of phase 2, it was entitled to either receive a bona fide offer based on final binding bids or be given the opportunity to match the successful bid. The August 2024 discussions regarding gaps between bids cannot constitute proper discharge of the right as they were limited to selected parameters chosen by RHB without providing full terms necessary for informed decision-making.

[17] RHB's position is that it has fully discharged TMLM's right of first refusal in two ways. First, RHB made a valid and binding offer on 25 April 2024 containing all salient commercial terms pursuant to the agreed framework between parties. RHB contends that TMLM's rejection of this offer and subsequent participation in phase 2 of the bid process was a commercial choice that discharged the right. Second, even if the right survived, RHB went beyond its obligations by giving TMLM an opportunity in August 2024 to match the terms of the preferred bidder. RHB maintains that the framework agreed through January-February 2024 correspondence established the complete mechanism for implementing the right of first refusal, and that TMLM's current position effectively seeks to revive its original proposal that

was explicitly rejected during framework negotiations. RHB argues that this is not an appropriate case for injunctive relief under s 55 of the Specific Relief Act 1950, as TMLM's remedy, if any, lies in damages.

ANALYSIS

Framework and implementation

[18] RHB submits that it has fully discharged TMLM's right of first refusal through its compliance with the agreed framework negotiated between parties in early 2024. According to this framework, RHB would consider bids received, make an offer to TMLM setting out RHB's terms, and TMLM would have six weeks to decide. RHB contends that its letter of 25 April 2024 constituted a valid and binding offer containing all salient commercial terms necessary for acceptance.

[19] TMLM contends that RHB's letter of 25 April 2024 did not constitute a valid offer capable of discharging the right of first refusal. TMLM argues that the letter was premature as it was based on non-binding phase 1 bids, included family takaful products which TMLM could not provide at the time, and lacked essential terms necessary for a Bancassurance agreement. TMLM maintains that proper exercise of the right of first refusal requires disclosure of the final binding terms RHB is minded to accept.

[20] Having carefully considered the submissions and evidence, I find TMLM's position to be more persuasive. The contemporaneous documentary evidence establishes that RHB's 25 April 2024 letter was based solely on indicative non-binding bids received during phase 1 of the bid process. While RHB and TMLM had agreed to a framework stated in RHB's 7 February 2024 letter where RHB would 'make an offer to TMLM setting out our terms' after 'considering the bids received', RHB's letter explicitly states it was 'extending the offer to you prior to the commencement of phase 2' and that 'RHB and/or its financial advisor will communicate the exact timing of phase 2 launch to you in due course'. The timing is significant because, as evidenced by the bid process documentation, phase 1 bids were explicitly stated to be non-binding, while phase 2 was designated for final binding bids after bidders had received detailed information about the business and conducted due diligence.

[21] The authorities support TMLM's position regarding what constitutes a valid offer under a right of first refusal. In *Fraser and others; Thames Television Ltd and others* [1984] QB 44, Hirst J held that a contractual offer must contain at least the salient terms proposed. It was stated:

> Mr Harman contended that Thames did in fact make a contractual offer of parts to the three girls by Miss Sadler's approach to the agents in March and by letters. He

> argued that a contractual offer did not require any detailed spelling out of the terms. I do not accept these contentions. In my judgment a contractual offer must contain at least the salient terms proposed, including most importantly terms as to remuneration. On none of the occasions relied on by Mr Harman were any terms whatsoever spelt out.

[22] This statement arose from a dispute over whether Thames Television had fulfilled its obligation to make an offer to the plaintiffs (a rock band) under a right of first refusal. Thames Television argued that they had made a contractual offer through informal approaches and letters. However, Hirst J disagreed, finding that none of these instances constituted a contractual offer because they did not spell out any terms, particularly those related to payment.

[23] The evidence shows that RHB's 25 April 2024 letter fell short of this requirement. The current Bancassurance agreement between the parties spans 44 pages with detailed financial provisions, yet RHB's letter contained only broad outlines of certain financial terms.

[24] The evidence shows that RHB's 25 April 2024 letter fell short of this requirement. While the current Bancassurance agreement between the parties spans 44 pages with detailed financial provisions, RHB's letter provided only five broad financial parameters: (a) an upfront access fee of 'at least RM1,850mm'; (b) variable bonuses subject to 'a minimum of 8% of annualised premium equivalent'; (c) personal banca bankers expenses reimbursement subject to 'a minimum of 3% of APE'; (d) IT and marketing allowances reimbursement subject to 'a minimum of 15% of APE', and (e) sales commissions at the 'maximum commission rate ... allowable under applicable Bank Negara Malaysia (BNM) regulations'. The letter itself acknowledged that if these terms were accepted, 'the parties will proceed to negotiate to enter into the new bancassurance and bancatakaful agreements, which will also comprise of terms that are customary to such agreements'.

[25] Furthermore, in the English High Court case of *QRS Sciences Ltd v BTG International Ltd* [2005] EWHC 1500 (Ch), Park J established that for an offer to constitute proper exercise of a right of first refusal, it must be a bona fide offer which the grantor in good faith, considers to be one which a genuinely interested offeree would be prepared to consider. His Lordship stated:

> There are, however, two detailed points which it is desirable for me to spell out now. The first is that, for an offer by BTG to QRS to be of the sort which will rank under cl 14.4 as BTG 'first offering to assign such patent to the licensee', the offer must be not merely in form a contractual offer: it must also be a bona fide offer. That is an expression which I take from the judgment of Brightman J in *Smith v Morgan* [1971] 2 All ER 1500; [1971] 1 WLR 803, at p 808. The judge does not quite say 'bona fide offer'. He says: 'The plaintiff must, of course, act bona fide in defining the price to be included in the offer'. The meaning is, I think, the same. What is

A contemplated is that BTG needs to make an offer at a price which it is willing to accept and, more importantly as it seems to me, at a price which, in good faith, it considers to be one which a genuinely interested offeree would be prepared to consider.

B **[26]** RHB's letter, based on non-binding indicative bids and including family takaful products that TMLM was not licensed to provide at the time, cannot meet this requirement.

C **[27]** The principles established in the English High Court case of *Astrazenica UK Ltd v Albemarle International Corp* [2011] EWHC 1574 (Comm) are particularly apposite. In that case, Albemarle supplied AstraZeneca with DIP (2,6 Di-isopropyl-phenol), a key ingredient used to manufacture the anesthetic Diprivan. Their supply agreement contained a
D right of first refusal clause providing that if AstraZeneca decided to switch from DIP to propofol, it would give Albemarle 'the first opportunity and right of first refusal to supply propofol ... under mutually acceptable terms and conditions'.

E **[28]** When AstraZeneca later decided to source propofol directly, it conducted a bidding process and awarded the contract to another supplier (Sochinaz) without giving Albemarle a proper opportunity to match Sochinaz's offer. Flaux J held (at [35]) that, as an irreducible minimum, a right of first refusal by its nature confers a right to be given an opportunity to match any
F third party offer which the grantor of the right might be otherwise minded to accept, and, in the event that the grantee matches the offer, to be awarded the business to which the offer relates. His Lorsdhip stated:

> I agree with Miss Carr that, as an irreducible minimum, a right of 'first refusal' by its nature confers a right to obtain the subject matter of the right, whether it is land
G or another asset or a service or a business opportunity to enter a contract. In other words, it confers a right to be given an opportunity to match any third party offer which the grantor of the right might be otherwise minded to accept, and, in the event that the grantee matches the offer, to be awarded the business to which the offer relates.

H

[29] The court emphasised that where there is a third party deal which the grantor is minded to proceed with, 'full and fair disclosure of that deal by the grantor is required' to enable meaningful exercise of the right of first refusal (at [53]). Moreover, 'good faith in setting out the precise terms of the offer the
I grantee has to match' is essential (at [54]). The relevant passage from the judgment is produced as follows:

> 53. I accept Miss Carr's submissions that this approach is misconceived because, on analysis, all that Albemarle is relying upon are obligations which are inherent in or incidents of the right of first refusal. Thus, if there is a third party deal with which

> the grantor is minded to proceed, in order to enable the grantee to exercise its right of first refusal and match that offer, full and fair disclosure of that deal by the grantor is required. That seems to me to be an incident of the obligation on the grantor to act in good faith recognised by both Brightman J and Park J. Furthermore, the passage from the judgment of Hirst J which I cited in paragraph 45 above recognises the importance of providing full details of whatever contractual 'deal' is contemplated, so as to enable the right of first refusal to be properly exercised.
>
> 54. So far as the obligation to act in good faith is concerned, that is not some vague generalised obligation in the current context, but, as the cases I have cited recognise, what is required (consonant with the obligation to provide full and fair disclosure of any deal the grantor is minded to accept) is good faith in setting out the precise terms of the offer the grantee has to match and which the grantor is minded to accept. I agree with Miss Carr that, without good faith in that sense, the grantee will not have the opportunity to which the right of first refusal entitles it contractually, to understand and have the opportunity of matching the third party proposal.

[30] The parallel with the present case is clear. The evidence shows that at the time of the 25 April 2024 letter, RHB had only received non-binding phase 1 bids and had not yet received or evaluated binding phase 2 bids. RHB thus could not have been 'minded to accept' any particular terms at that stage, making the 25 April 2024 letter premature and insufficient to discharge RHB's obligations under the right of first refusal provision. As Flaux J observed in *Astrazenica*, without proper disclosure of the actual deal the grantor is minded to accept, 'the grantee will not have the opportunity to which the right of first refusal entitles it contractually, to understand and have the opportunity of matching the third party proposal' (at [54]).

[31] RHB's argument about compliance with the agreed framework misses a crucial point. While the framework may establish procedures for implementation, it cannot override the fundamental requirements for a valid offer under a right of first refusal. As held in *Smith v Morgan* [1971] 2 All ER 1500; [1971] 1 WLR 803 (English High Court — Chancery Division) by Brightman J, the grantor must 'act bona fide in defining the terms to be included in the offer'. The evidence shows that RHB's 25 April 2024 letter was premature, being based on non-binding indicative bids rather than final terms RHB was prepared to accept.

[32] The commercial context further supports this conclusion. The bid process documentation explicitly distinguished between phase 1's non-binding indicative bids and phase 2's final binding bids. This two-phase structure was designed precisely because detailed financial, operational, and business information would only be provided to shortlisted bidders in phase 2, enabling them to submit informed binding bids. RHB's attempt to discharge the right of first refusal based on preliminary phase 1 bids undermines this carefully structured process.

[33] Moreover, the evidence shows that TMLM promptly raised its concerns about the premature nature of the offer. In its letter dated 20 June 2024, TMLM explicitly articulated its understanding that RHB 'would notify us of the bona fide offer that it wishes to accept from a final bidder only after considering all the bids at the conclusion of the bid process ie at the end of phase 2'. TMLM further specified that this 'ROFR offer' should 'set out the fee structure and other payments that will be made under a conventional life insurance arrangement, and all material terms and conditions (without any additional terms beyond the terms in the final bidder's offer)'. This understanding aligns with both commercial logic and the authorities' interpretation of what constitutes proper exercise of a right of first refusal. As TMLM emphasised, this approach was intended to be 'consistent with the construct of a ROFR', requesting only that RHB 'first notifies us in the event RHB decides to select another final bidder at the end of phase 2 and provide us with the opportunity to determine if we are able to match the offer by the final bidder'.

[34] For these reasons, I find that RHB's letter of 25 April 2024 did not constitute valid exercise of the right of first refusal, despite the agreed implementation framework. The letter was premature, based on non-binding indicative bids, and lacked essential terms necessary for a valid offer under a right of first refusal. Consequently, TMLM's right of first refusal remains in force until properly discharged through disclosure of the final binding terms RHB is minded to accept.

Commercial choice and consequences

[35] RHB contends that TMLM made a strategic commercial choice to reject RHB's 25 April 2024 offer and instead participate in phase 2 of the bid process. RHB argues that by doing so, TMLM exhausted its right of first refusal and cannot now seek to revive those rights after having made the decision to compete in the bidding process. RHB submits that TMLM's participation in phase 2 constituted a counter-offer which discharged RHB's obligations under the right of first refusal.

[36] TMLM's position is that its participation in phase 2 of the bid process cannot be construed as waiving or discharging its right of first refusal. While participating in phase 2 by submitting a joint proposal with TIFB, TMLM maintained throughout that the right of first refusal would be properly implemented only after conclusion of phase 2, when RHB had identified its preferred bidder. TMLM argues that for the right of first refusal to have any meaningful effect, it must be given the opportunity to match the successful bid selected by RHB at the conclusion of phase 2. This understanding was clearly

communicated to RHB in TMLM's letter of 20 June 2024, where TMLM confirmed its willingness to respond promptly within an agreed timeframe once RHB had made its selection.

[37] Having carefully considered the submissions and evidence, I find TMLM's position to be more persuasive. The contemporaneous documentary evidence clearly demonstrates that TMLM had consistently maintained its position regarding the right of first refusal throughout the process. In its letter dated 20 June 2024, even while agreeing to participate in phase 2 by submitting a joint binding proposal with TIFB, TMLM explicitly reiterated its understanding of the right of first refusal process, stating that RHB would notify TMLM of 'the bona fide offer that it wishes to accept from a final bidder only after considering all the bids at the conclusion of the bid process ie at the end of phase 2'. TMLM maintained that, consistent with the construct of a right of first refusal, it should be given 'the opportunity to determine if we are able to match the offer by the final bidder'. This position regarding the proper implementation of the right of first refusal was clearly communicated to RHB and was never contested by RHB at the material time.

[38] The authorities support TMLM's position. In *Astrazenica*, Flaux J held that a right of first refusal confers 'a right to be given an opportunity to match any third party offer which the grantor of the right might be otherwise minded to accept'. The learned judge found that where the grantor has received an offer from a third party which it is minded to accept, what is required to comply with the obligation to grant a right of first refusal is that the grantee be afforded the opportunity to match that offer.

[39] The principle in *Astrazenica* is particularly apt here as the factual matrix is strikingly similar. Like in *Astrazenica*, TMLM's participation in the competitive bid process alongside other bidders did not extinguish its right of first refusal. Rather, the right of first refusal entitled TMLM to be given the opportunity to match any third party offer that RHB was minded to accept. This right subsisted independently of TMLM's participation in phase 2 of the bid process.

[40] RHB's argument that TMLM's participation constituted a counter-offer which discharged the right of first refusal is not sustainable. The evidence shows that when participating in phase 2, TMLM clearly maintained its position that the right of first refusal would only be properly implemented after RHB had identified its preferred bidder at the conclusion of phase 2. This was expressly stated in TMLM's letter of 20 June 2024.

[41] Furthermore, as held in *Smith v Morgan*, where a right of first refusal exists, the grantor is obliged to make an offer to the grantee at the price at which

it is minded to sell. Brightman J's statement in *Smith v Morgan*, concerning the grantor's obligation in a right of first refusal, is found on p 808 of the judgment:

> [The] obligation on the vendor, should she wish to sell, is an obligation to make an offer to the purchaser at the price and at no more than the price at which she is, as a matter of fact, willing to sell.

[42] Brightman J further emphasised the importance of good faith in setting the price:

> [The] plaintiff must, of course, act bona fide in defining the price to be included in the offer.

[43] Applying this principle, RHB remained obliged to give TMLM the opportunity to match the successful bid, regardless of TMLM's participation in phase 2.

[44] The commercial reality also supports this conclusion. As evidenced by the correspondence between the parties, the bid process was conducted in two phases precisely because phase 1 involved non-binding indicative bids while phase 2 was for final binding bids. It would defeat the commercial purpose of the right of first refusal if TMLM was precluded from matching the final binding bid that RHB ultimately decided to accept. Such an interpretation would render the right of first refusal practically meaningless.

[45] For these reasons, I find that TMLM's participation in phase 2 of the bid process did not discharge or waive its rights under the right of first refusal. TMLM remains entitled to be given the opportunity to match the successful bid selected by RHB at the conclusion of phase 2.

Additional opportunity to match

[46] RHB submits that it went beyond its contractual obligations by providing TMLM with a second opportunity to match terms in August 2024. RHB argues that this additional chance to match the preferred bidder's terms, though not required, demonstrates its good faith in dealings with TMLM. RHB contends that the information provided about the gaps between TMLM's bid and the successful bidder's terms was sufficient for TMLM to exercise any matching rights.

[47] TMLM contends that the August 2024 discussions cannot constitute proper discharge of its right of first refusal. TMLM argues that these discussions were conducted expressly without prejudice to its right of first refusal rights, and more critically, RHB failed to provide the full and complete terms of the successful bid, instead only sharing selected parameters chosen by

RHB. TMLM maintains that for the right of first refusal to have any meaningful effect, it must be given the opportunity to review and match the complete terms of the successful bid.

[48] Having carefully considered the submissions and evidence, I find TMLM's position to be more persuasive. The contemporaneous documentary evidence demonstrates that the August 2024 discussions were expressly conducted without prejudice to TMLM's right of first refusal rights. This is clearly evidenced in RHB's email dated 8 August 2024, where RHB explicitly acknowledged that 'the discussion we had was subject to each other's rights including but not limited to our respective legal position'.

[49] The authorities, including *Astrazenica*, support TMLM's position that a proper discharge of a right of first refusal requires 'full and fair disclosure of any deal the grantor is minded to accept' to ensure the grantee has a meaningful opportunity to understand and match the third-party proposal.

[50] The evidence shows that RHB's disclosure in August 2024 again fell short of this requirement. While RHB did provide quantitative comparisons on several key financial terms in its email of 8 August 2024, including specific figures on access fees, personal banker banca incentives, marketing allowances, IT spend commitments, and reciprocal business arrangements, this disclosure was still selective rather than comprehensive. RHB provided selected parameters of comparison between TMLM's bid and the successful bid, rather than the full and complete terms of the successful bid.

[51] The documentary evidence shows that TMLM promptly responded to RHB's email of 8 August 2024 by submitting a comprehensive improved bid on 26 August 2024, which addressed numerous aspects of the partnership, including the upfront facilitation fee, payment structure, right of first refusal provisions, contract extension terms, and various operational improvements. TMLM's response specifically addressed the personal banker banca incentives issue by proposing in point 7 of its letter that 'a fixed allowance per PBB will be provided for Life and Family where RHB has the control on the incentive structure'. This demonstrates TMLM's good faith efforts to address the specific concerns raised by RHB. However, despite this substantial response, RHB still declined to proceed with TMLM without providing access to the full terms of the successful bid.

[52] Though RHB's email of 8 August 2024 did provide specific details on several key terms, including financial parameters and non-financial considerations, this discrepancy supports TMLM's argument that RHB did not offer a genuine opportunity to match the winning bid. The evidence indicates that TMLM made serious attempts to address all identified gaps

through its comprehensive 26 August 2024 response, yet without access to the complete successful bid, TMLM was inherently disadvantaged in its ability to fully match all relevant criteria. This lack of complete transparency prevented TMLM from making a fully informed decision and potentially matching the winning bid on all relevant criteria.

[53] A bona fide offer for the renewal of the Bancassurance agreement should encompass the complete terms of the winning bid which RHB failed to satisfy. TMLM's participation in the August 2024 discussions, aimed at 'closing the gaps', was without prejudice to their right to receive the full details of the successful bid.

[54] The commercial context supports this conclusion. A Bancassurance agreement, as evidenced by the current agreement between the parties which spans 44 pages, is a complex commercial arrangement with numerous interconnected terms. As held in *Fraser and others;v Thames Television Ltd and others* [1984] QB 44 by Hirst J, a contractual offer must contain at least the salient terms proposed. While RHB did provide numerical comparisons on several key financial terms, the selective disclosure of certain parameters, without disclosing the complete successful bid in its entirety, cannot constitute proper discharge of the right of first refusal.

[55] RHB's argument that its August 2024 discussions went beyond its obligations misses the point. The issue is not whether RHB provided additional opportunities beyond what was required, but whether what was provided satisfied the fundamental requirements of the right of first refusal. The evidence shows it did not. As held in *QR Sciences Ltd v BTG International Ltd*, a proper exercise of a right of first refusal requires an offer made in good faith that a genuinely interested offeree would reasonably consider.

[56] Furthermore, TMLM has demonstrated that the terms of a Bancassurance agreement cannot be considered in isolation or only in respect of a few identified parameters. The comprehensiveness of TMLM's 26 August 2024 response — which addressed not only financial terms but also governance structures, product development, training, digital innovation, and customer experience enhancements — underscores the complexity of the agreement at issue and the inadequacy of RHB's selective disclosure. The contemporaneous evidence shows that immediately upon receiving the detailed comparison in RHB's email of 8 August 2024, TMLM worked to develop and submit an improved bid addressing the identified gaps. However, without access to the full terms of the successful bid, TMLM was not in a position to properly evaluate and match all material aspects of the competing offer.

[57] For these reasons, I find that RHB's August 2024 discussions and relatively detailed but nonetheless selective disclosure of certain terms did not constitute proper discharge of TMLM's right of first refusal. The right continues to subsist until TMLM is provided with the full and complete terms of the successful bid and given a meaningful opportunity to match those terms.

Takaful issue and contemporaneous conduct

[58] RHB argues that TMLM's complaints about the inclusion of family *takaful* products in the April offer are without merit, given TMLM's subsequent ability to participate with a takaful partner in its phase 2 bid. RHB further contends that TMLM's contemporaneous conduct, particularly its failure to raise objections about the adequacy of information during the April-June period, undermines its current position.

[59] TMLM contends that RHB's inclusion of family takaful products in its 25 April 2024 offer was improper as TMLM was not licensed to provide such products at that time. TMLM argues that this inclusion, without prior notice, made it impossible for TMLM to effectively assess or accept the offer. TMLM maintains that its subsequent collaboration with a takaful partner for phase 2 does not retrospectively validate RHB's April offer, which must be assessed based on the circumstances existing at the time it was made.

[60] Having carefully considered the submissions and evidence, I find TMLM's position to be more persuasive. The contemporaneous documentary evidence establishes that the existing Bancassurance agreement dated 29 December 2014 between the parties relates solely to conventional life insurance. This is a critical starting point for analysing the scope of the right of first refusal contained in cl 3.2(b) of that agreement.

[61] The authorities support TMLM's position regarding the proper exercise of a right of first refusal. In *QR Sciences Ltd*, it was held that a properly exercised right of first refusal requires an offer made in good faith that the grantor genuinely believes a serious offeree would consider. The evidence shows that at the time of RHB's 25 April 2024 offer, RHB knew that TMLM was not licensed to provide family takaful products. This knowledge is crucial in assessing whether the offer was truly bona fide.

[62] The principle in *Smith v Morgan*, as elaborated by Brightman J, requires that the grantor of a right of first refusal must 'act bona fide in defining the price to be included in the offer'. Extending this principle to the present case, RHB was required to act bona fide in defining all material terms of the offer, including its scope. By including family takaful products without prior notice, knowing TMLM's licensing limitations, RHB failed to meet this requirement.

[63] The evidence further shows that TMLM promptly raised its concerns about the takaful inclusion. In its letter dated 20 June 2024, TMLM explicitly stated that it could not effectively assess RHB's offer as it contained terms involving both conventional life insurance and family takaful insurance, along with a commitment for an upfront access fee covering both products. This contradicts RHB's assertion about TMLM's failure to raise objections during the April-June period.

[64] RHB's argument about TMLM's subsequent participation with a takaful partner is not persuasive. establishes that a right of first refusal requires good faith in presenting precise terms for the grantee to match. The fact that TMLM later managed to secure a takaful partner does not retrospectively validate an offer that was not bona fide at the time it was made.

[65] Moreover, the commercial context supports TMLM's position. The evidence establishes that there is no single insurer in Malaysia licensed to provide both conventional and takaful products under the same entity. This regulatory reality, which RHB was aware of, makes the inclusion of takaful products in the April offer particularly problematic. The fact that TMLM subsequently found a way to collaborate with a takaful provider does not change the fact that RHB's April offer required capabilities that TMLM did not and could not have had at that time.

[66] For these reasons, I find that RHB's inclusion of family takaful products in its 25 April 2024 offer rendered that offer ineffective for the purposes of discharging TMLM's right of first refusal. TMLM's subsequent ability to participate in phase 2 with a takaful partner does not alter this conclusion, as the validity of the April offer must be assessed based on the circumstances existing at the time it was made.

MULTIPLE OPPORTUNITIES AND CHOICE

[67] RHB submits that TMLM is improperly attempting to secure a third bite at the cherry after having received both an exclusive offer and an opportunity to match the successful bid. RHB emphasises that TMLM's participation in phase 2 of the bid process was voluntary and that TMLM could have accepted the April offer instead of choosing to compete.

[68] TMLM contends that it has not yet received a proper opportunity to exercise its right of first refusal. TMLM argues that neither the April 2024 offer nor the August 2024 discussions constituted valid exercises of the right of first refusal, as the former included terms TMLM could not accept at the time, while the latter failed to provide full disclosure of the successful bid's terms. TMLM maintains that its participation in phase 2 was expressly without

prejudice to its right of first refusal rights.

[69] Having carefully considered the submissions and evidence, I find TMLM's position to be more persuasive. The contemporaneous documentary evidence demonstrates that neither of RHB's purported opportunities constituted proper discharge of the right of first refusal. The April 2024 offer included family takaful products which TMLM was not licensed to provide at that time, while the August 2024 discussions failed to provide full disclosure of the successful bid's terms.

[70] The authorities support TMLM's position. *Astrazenica* affirms that a right of first refusal entails 'a right to receive a contractual offer on terms the grantor is prepared to accept'. The court emphasised that where there is a third party deal which the grantor is minded to accept, 'full and fair disclosure of that deal by the grantor is required'.

[71] The evidence shows that RHB's April 2024 offer fell short of this requirement. As established in *QR Sciences Ltd v BTG International Ltd*, an offer must be 'bona fide' and one which 'in good faith, [the grantor] considers to be one which a genuinely interested offeree would be prepared to consider'. RHB's inclusion of family takaful products, knowing TMLM's licensing limitations at the time, cannot be considered a bona fide offer capable of triggering TMLM's right of first refusal obligations.

[72] Similarly, the August 2024 discussions did not constitute proper exercise of the right of first refusal. As held in *Fraser and others v Thames Television Ltd and others* [1984] QB 44 by Hirst J, a contractual offer must must include at least the salient terms. The evidence shows that RHB only provided selected parameters rather than the full terms of the successful bid. This selective disclosure falls short of the full and fair disclosure requirement established in *Astrazenica*.

[73] RHB's characterisation of TMLM's participation in phase 2 as a voluntary choice that somehow exhausts its right of first refusal rights is not sustainable. The evidence shows that TMLM consistently maintained its position regarding the proper implementation of its right of first refusal throughout the process. In its letter dated 20 June 2024, TMLM clearly articulated its understanding that 'RHB would notify us of the bona fide offer that it wishes to accept from a final bidder only after considering all the bids at the conclusion of the bid process ie at the end of phase 2'. TMLM further stated that it 'therefore only ask[s] that RHB first notifies us in the event RHB decides to select another final bidder at the end of phase 2 and provide us with the opportunity to determine if we are able to match the offer by the final bidder'. This position regarding how the right of first refusal should be

implemented was consistently maintained by TMLM, and was not contested by RHB at the material time of TMLM's participation in phase 2.

[74] The commercial context further supports this conclusion. A Bancassurance agreement is a complex commercial arrangement with numerous interconnected terms. As the current agreement between the parties demonstrates, spanning 44 pages, such arrangements cannot be properly evaluated based on selective disclosure of certain terms. The evidence shows that some of the factors which RHB ultimately relied on to reject TMLM's phase 2 bid were not even part of the August 2024 discussions.

[75] RHB's argument about TMLM seeking a 'third bite at the cherry' mischaracterises the nature of the right of first refusal. The right is not exhausted by participating in a competitive bid process, nor by receiving incomplete information about the successful bid. As held in *Smith v Morgan*, where a right of first refusal exists, the grantor must make an offer that is capable of acceptance. Neither the April 2024 offer nor the August 2024 discussions met this requirement.

[76] For these reasons, I find that TMLM has not yet received a proper opportunity to exercise its right of first refusal. The right continues to subsist until TMLM is provided with full disclosure of the successful bid's terms and given a meaningful opportunity to match those terms.

LEGAL INTERPRETATION OF RIGHT OF FIRST REFUSAL

[77] RHB submits that a right of first refusal has no fixed legal meaning and must be interpreted according to the parties' agreed framework for its implementation. RHB maintains that having complied with this framework, and having gone beyond it to provide additional opportunities to TMLM, it has more than satisfied any obligations it had under the right of first refusal.

[78] TMLM contends that while a right of first refusal may not have a fixed legal meaning, the authorities establish certain irreducible minimum requirements for its proper exercise. TMLM argues that these requirements include the right to receive full disclosure of the terms the grantor is minded to accept, and a meaningful opportunity to match those terms. TMLM maintains that these fundamental requirements cannot be displaced by the parties' implementation framework.

[79] Having carefully considered the submissions and evidence, I find TMLM's position to be more persuasive. While it is correct that a right of first refusal is not a term of art, the authorities establish certain fundamental requirements that must be met for its proper exercise, regardless of the parties'

implementation framework. In *Astrazenica*, Flaux J held that 'as an irreducible minimum, a right of first refusal by its nature confers a right to obtain the subject matter of the right'. The learned judge elaborated that this means 'a right to be given an opportunity to match any third party offer which the grantor of the right might be otherwise minded to accept'.

[80] The evidence shows that RHB's purported compliance with the implementation framework fell short of these fundamental requirements. In *QR Sciences Ltd* it was established that a proper exercise of a right of first refusal requires an offer made in good faith that the grantor genuinely believes an interested offeree would consider. RHB's April 2024 offer, which included family takaful products that TMLM was not licensed to provide at the time, cannot meet this requirement.

[81] Furthermore, as held in *Fraser and others v Thames Television Ltd* and others a contractual offer must contain 'at least the salient terms proposed'. The evidence demonstrates that RHB's August 2024 discussions fell short of this requirement, providing only selected parameters rather than full disclosure of the successful bid's terms. The implementation framework agreed between the parties cannot override these fundamental requirements for proper exercise of a right of first refusal.

[82] The commercial context supports this conclusion. The current Bancassurance agreement between the parties spans 44 pages, demonstrating the complexity of such arrangements. As established in *Smith v Morgan*, an offer under a right of first refusal must be capable of acceptance. This principle necessarily requires disclosure of all material terms, not just selected parameters.

[83] RHB's argument that compliance with the implementation framework satisfies its obligations misunderstands the nature of a right of first refusal. The framework may establish the procedure for implementation, but it cannot diminish the substantive rights that a right of first refusal confers. As held in *Astrazenica*, where the grantor is minded to accept a third party offer, full and fair disclosure of that offer is required to enable meaningful exercise of the right of first refusal.

[84] The evidence shows that TMLM consistently maintained this position throughout the process. In its letter dated 20 June 2024, TMLM explicitly stated that proper exercise of the right of first refusal required disclosure of the full terms RHB wished to accept from the final bidder. This understanding aligns with the authorities' interpretation of what constitutes proper exercise of a right of first refusal.

[85] Moreover, RHB's argument that it exceeded its obligations by providing additional opportunities is misconceived. The issue is not the number of opportunities provided, but whether any of those opportunities met the fundamental requirements for proper exercise of a right of first refusal. The evidence shows they did not. Neither the April 2024 offer nor the August 2024 discussions provided TMLM with full disclosure of the terms RHB was minded to accept, as required by the authorities.

[86] For these reasons, I find that while the parties' implementation framework may govern the procedure for exercising the right of first refusal, it cannot override the fundamental requirements established by the authorities for its proper exercise. RHB has not yet satisfied these requirements, and consequently, TMLM's right of first refusal remains in force.

ASTRAZENICA REMAINS APPLICABLE

[87] RHB attempts to distinguish *Astrazenica* from TMLM's case on three main grounds, but these distinctions are ultimately unconvincing. First, RHB argues that unlike in *Astrazenica* where there was no agreed framework, TMLM and RHB had specifically negotiated one. However, this distinction misses the point that in both cases, the right holder had an underlying contractual right of first refusal that needed to be given proper effect regardless of any subsequent process agreed. The framework cannot diminish the fundamental nature of the right itself.

[88] Second, RHB emphasises that unlike Albemarle who was forced to bid competitively from the start, TMLM received an exclusive offer before any obligation to compete. This overlooks several crucial similarities between the cases. In both instances, the right holders were effectively pushed into a competitive bidding process rather than being given a true right of first refusal. Moreover, RHB's 25 April 2024 'offer' was based on non-binding phase 1 bids and included family takaful products that TMLM could not provide at the time — hardly constituting the kind of bona fide offer contemplated in *Astrazenica*. As Flaux J emphasised, for a right of first refusal to be meaningful, the right holder must be given the opportunity to match the actual terms the grantor is minded to accept.

[89] The core principles established in *Astrazenica* about what constitutes proper implementation of a right of first refusal — including the requirements for full and fair disclosure of the deal the grantor is minded to accept and good faith in setting out precise terms to be matched — appear to apply equally to TMLM's situation. RHB's attempts to distinguish the cases do not adequately address these fundamental similarities or explain why these principles should not apply. The key question remains whether RHB gave proper effect to

TMLM's right of first refusal by providing a meaningful opportunity to match the actual terms RHB was minded to accept, with full and fair disclosure. The factual distinctions RHB draws do not convincingly explain why the *Astrazenica* principles regarding implementation of such rights should not apply.

CONCLUSION

[90] In light of all the foregoing analysis, I find that TMLM's right of first refusal under cl 3.2(b) of the Bancassurance agreement dated 29 December 2014 remains in full force and subsists. RHB's purported discharge through its 25 April 2024 offer and subsequent August 2024 discussions fell short of the fundamental requirements established by the authorities for proper exercise of a right of first refusal. The implementation framework negotiated between the parties, while establishing procedural mechanisms, could not and did not override these substantive requirements. TMLM is entitled to receive full disclosure of the final binding terms RHB is minded to accept from its successful bidder and a meaningful opportunity to match those terms.

[91] Given this court's findings that TMLM's right of first refusal remains in full force, the court has granted the following orders:

(a) a declaration that the TMLM's right of first refusal pursuant to cl 3.2(b) of the Bancassurance agreement dated 29 December 2014 to renew the terms of the said Bancassurance arrangement agreement remains in full force and subsists.

(b) several procedural orders requiring:

  (i) RHB to file and serve within seven days an affidavit setting out the full terms of the successful bid from their bid process;

  (ii) RHB to deliver to and deposit with the court within seven days the successful bid in a sealed envelope (to be unsealed only if there's a dispute about the terms);

  (iii) TMLM to confirm within 14 days of receiving RHB's affidavit whether they are matching the terms of the successful bid; and

  (iv) RHB to be restrained from awarding any contract to, contracting with, engaging or appointing any third party regarding the subject matter of the Bancassurance agreement pending completion of the above steps.

(c) costs of RM50,000 to be paid by RHB to the TMLM, subject to payment of allocator fees.

Order accordingly.

Reported by Dzulqarnain Ab Fatar